No. 01-1229 (10)

Supreme Court U.S.
FILED
JUN 24 2002
OFFICE OF THE CLERK

In The
Supreme Court of the United States

PIERCE COUNTY, a municipal corporation,

Petitioner,

v.

IGNACIO GUILLEN, as Legal Guardian for JENNIFER GUILLEN and ALMA GUILLEN, minors; and MARIANO GUILLEN, as Legal Guardian for PAULINA GUILLEN and FATIMA GUILLEN,

Respondents.

On Writ Of Certiorari To The State Supreme Court of Washington

JOINT APPENDIX

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Petition For Certiorari Filed February 22, 2002
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A. Pierce County Superior Court for State of Washington Cause No. 96-2-13404-5

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01/10/97	Pierce County Answer
06/26/97	Motion for Summary Judgment with attachments:
	A. Declaration of Thomas Ballard
	B. Declaration of Daniel Hamilton
	C. Pierce County's Amended Answer to Plaintiff's Interrogatory No. 1
	D. Declaration of Wayne Gruen
07/14/97	Brief in Opposition to Motion for Summary Judgment and Cross Motion for Summary Judgment
07/14/97	Declaration of Darrell Cochran in Opposition to Summary Judgment
09/05/97	Pierce County's Rebuttal Brief with attached Supplemental Declaration of Thomas Ballard
09/05/97	Declaration of Susan Jensen Regarding Authenticity of Documents for *In Camera* Review
10/02/97	Pierce County's Motion for Reconsideration
10/02/97	Third Declaration of Thomas Ballard
10/08/97	Brief in Opposition
10/10/97	Order Denying Motion for Reconsideration
10/31/97	Verbatim Report of Proceedings (09/12/97)

11/05/97	Order Denying Motion for Summary Judgment and Granting Plaintiff's Cross Motion for Summary Judgment

B. Pierce County Superior Court for State of Washington Cause No. 98-2-06119-2

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10/08/98	Memorandum in Support of Pierce County's Motion for a Protective Order
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10/16/98	Pierce County's Opposition to Plaintiff's Motion to Compel with attached Affidavit of Daniel R. Hamilton in Opposition to Motion to Compel
10/22/98	Plaintiff's Brief in Opposition to Motion for Protective Order
10/23/98	Order Granting Plaintiff's Motion to Compel Discovery
10/23/98	Order Denying Pierce County's Motion for Protective Order

10/23/98	CR 21 Motion to Drop Estate as a Party
10/23/98	Affidavit in Support of CR 21 Motion
10/23/98	Memorandum in Support of CR 21 Motion
10/29/98	Verbatim Transcript of Proceedings of October 23, 1998
10/30/98	Pierce County's Motion to Reconsider
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APPENDIX A

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

IGNACIO GUILLEN Plaintiff, vs. Pierce County, a municipal corporation, Defendant.	)	NO. COMPLAINT TO REQUIRE DISCLOSURE OF DOCUMENTS

Plaintiff alleges as follows.

I.

PARTIES

1. Plaintiff, Ignacio Guillen, is a resident of Pierce County, Washington.

2. Defendant, Pierce County, is a municipal corporation organized under the laws of the State of Washington.

II.

BACKGROUND

3. On July 5, 1996 Plaintiff's wife, Clementina Guillen-Alejandre, was involved in an auto accident at the intersection of 168th Street East and B Street East in Pierce County, Washington. As a result of the accident, Clementina Guillen died.

4. According to newspaper reports there have been a number of accidents at this intersection in the past. The News Tribune on Thursday, July 11, 1996 reported that "Since 1990, 47 wrecks have occurred at the Spanaway intersection, an average of almost eight per year, county records show."

5. By a letter dated August 16, 1996 a request was made on behalf of the Plaintiff for the accident history at this intersection from the Defendant. By a letter dated September 9, 1996 the Defendant refused to provide the information.

6. By a letter dated October 28, 1996 a second request was made for the accident history at this intersection. The request stated:

> We are simply seeking information as to when accidents have occurred at the intersection for the last ten years. This would include any documents that record (1) the date of any such accidents, (2) the parties involved at each such accident, (3) the date of each such accident, (4) fatalities, if any, at each such accident, (5) the identification of all known accidents [should have been witnesses] at each such accident, (6) copies of photographs taken at each such accident, (7) the configuration of the intersection (what traffic signs existed) at the time of each such intersection [should have been accident], and (8) documents recording traffic counts at the intersection.

Once again the Defendant refused to provide the information except that it did provide information regarding traffic counts.

III.

JUDICIAL REVIEW OF AGENCY ACTIONS

7. RCW 42.17.340 provides for judicial review of a government agency's denial of a public disclosure request.

8. Defendant has wrongfully refused to provide information regarding the accident history of the intersection noted above.

9. Plaintiff is entitled to review the information that is the subject of this complaint. In addition, Plaintiff is entitled to recover his reasonable attorney fees, costs, and damages in the amount of $100.00 per day for the denial of this information.

WHEREFORE Plaintiff prays for the following relief:

1. Judgment in Plaintiff's favor ordering the Defendant to supply the requested information.

2. The award of attorney fees and costs incurred in bringing this action.

3. The award of damages of $100.00 for each day that the information was withheld by the Defendant.

4. For such further relief as this Court may deem just and proper.

Dated this 5 day of December, 1996.

GORDON, THOMAS, HONEYWELL,
MALANCA, PETERSON &
DAHEIM, P.L.L.C.

By /s/ Salvador A. Mungia
Salvador A. Mungia
WSBA No. 14807
Attorneys for Plaintiff

APPENDIX B

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

IGNACIO GUILLEN Plaintiff, v. PIERCE COUNTY, a municipal corporation, Defendant.	)	NO. 96-2-13404-5 ANSWER TO COMPLAINT

Defendant, PIERCE COUNTY, answers Plaintiff's Complaint as follows:

I.

PARAGRAPHS OF COMPLAINT ADMITTED

Defendant admits the allegations contained in paragraphs 2, 5, 6, and 7 of Plaintiff's Complaint.

II.

PARAGRAPHS OF COMPLAINT DENIED FOR LACK OF KNOWLEDGE OF INFORMATION

Defendant does not have sufficient knowledge or information to form a belief as to the truth of the allegations in paragraphs 1, 3, and 4 of Plaintiff's Complaint.

III.

PARAGRAPHS OF COMPLAINT DENIED

Defendant denies paragraphs 8 and 9 of the Plaintiff's Complaint.

IV.

AFFIRMATIVE DEFENSES

Defendant alleges that the information sought by Plaintiff is not subject to public disclosure or discovery by operation of RCW 42.17.310(1)(j) and 23 USC ¶ 409. The Complaint, therefore, fails to state a claim upon which relief can be granted.

The foregoing, with supporting authority, was set forth in the letters dated September 9 and November 12, 1996 referenced in the Complaint.

V.

REQUEST FOR JUDGMENT

Defendant, PIERCE COUNTY, requests that judgment be entered as follows:

1. Dismissing Plaintiff's Complaint with prejudice and without an award of costs.

2. Awarding Defendant its statutory attorney's fees and costs.

3. Awarding Defendant any additional or further relief which the Court finds appropriate or just.

Dated this 10th day of January, 1997.

JOHN W. LADENBURG
Prosecuting Attorney

By /s/ Susan P. Jensen
SUSAN P. JENSEN, WSBA #12187
Deputy Prosecuting Attorney
Attorneys for Pierce County
Phone: 591-6503

APPENDIX C

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

IGNACIO GUILLEN as Legal Guardian for JENNIFER GUILLEN and ALMA GUILLEN minors; and MARIANO GUILLEN, as Legal Guardian for PAULINA GUILLEN and FATIMA GUILLEN, Plaintiffs, vs. PIERCE COUNTY, a municipal corporation, and THE ESTATE OF CLEMENTINA GUILLEN-ALEJANDRE, Defendants.	NO. 98 2 06119 2 COMPLAINT

Plaintiffs allege as follows:

I. PARTY

1. Plaintiff, Ignacio Guillen is the father and legal guardian of Jennifer and Alma Guillen.

2. Mariano Guillen is the father and legal guardian of Paulina and Fatima Guillen.

3. Pierce County is a political subdivision of the State of Washington.

4. Defendant Clementina Guillen-Alejandre, now deceased, was a resident of Pierce County, Washington.

II. FACTUAL BACKGROUND

5. On July 5, 1996, Jennifer, Alma, Paulina and Fatima Guillen were passengers in a car being driven by Clementina Guillen.

6. The Guillen vehicle was heading northbound on B Street in Pierce County, Washington.

7. In July of 1996 there were stop signs at the intersection of 168th Street East and B Street East for cars traveling along B Street. There was no traffic control signals for cars traveling along 168th Street at that intersection.

8. A car being driven by Shelton L. Cole II was traveling eastbound on 168th Street East.

9. As the vehicle being driven by Clementina Guillen was traveling through the intersection at B Street East and 168th Street East, it was struck by the vehicle being driven by the vehicle Shelton Cole, II.

10. Clementina Guillen was killed as a result of this automobile accident. The four plaintiff children were injured as a result of this traffic accident.

11. In the six years preceding this fatal accident, there have been at least 47 automobile accidents at the intersection at B Street East and 168th Street East. A number of fatalities have occurred prior to this accident at this intersection as a result of automobile accidents. Pierce County citizens had, prior to this accident, requested the Pierce County government to erect a four way stop signage

at this intersection. The Pierce County government refused to do so. The Pierce County government waited until after Clementina Guillen's death to erect a four way traffic control signage at this intersection.

III. CAUSE OF ACTION: NEGLIGENCE

11. Defendant, Pierce County owed a duty to the plaintiffs to have a traffic control at the intersection at issue that would provide for the safe and orderly control of traffic through that intersection. Defendant Pierce County breached this duty. As a direct and proximate result of this breach, the plaintiffs have been damaged in an amount to be proven at time of trial.

12. Defendant Clementina Guillen-Alejandre owed a duty to safely travel through the intersection at issue. Defendant Clementina Guillen breached that duty. As a direct and proximate result of that breach, the plaintiffs were injured in an amount to be proven at time of trial.

WHEREFORE, plaintiffs pray for the following relief:

1. That judgment be entered against the defendants, jointly and severally, for the damages suffered by the plaintiffs to be proven at time of trial.

2. For the reasonable attorney fees and costs in prosecuting this action.

3. For such further and other relief as this court may deem just and proper.

Dated this 8 day of April, 1998.

GORDON, THOMAS, HONEYWELL,
MALANCA, PETERSON &
DAHEIM, P.L.L.C.

By /s/ Salvador A. Mungia
Salvador A. Mungia, WSBA No. 14807
Attorneys for Plaintiffs

APPENDIX D

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

IGNACIO GUILLEN as Legal Guardian for JENNIFER GUILLEN and ALMA GUILLEN minors; and MARIANO GUILLEN, as Legal Guardian for PAULINA GUILLEN and FATIMA GUILLEN, Plaintiffs, vs. PIERCE COUNTY, a municipal corporation, and THE ESTATE OF CLEMENTINA GUILLEN-ALEJANDRE, Defendants.	NO. 98 2 06119 2 **ANSWER OF DEFENDANT PIERCE COUNTY**

Comes now defendant Pierce County by and through counsel of record, Daniel R. Hamilton, Deputy Prosecuting Attorney, and in answer to plaintiffs' complaint, states as follows:

1. That in answer to the allegations contained in paragraphs 1 and 2 of plaintiffs' complaint, defendant Pierce County is without sufficient information to form a belief in the truth of the averments and therefore denies the same.

2. That in answer to the allegations contained in paragraphs 3 through 6, 8 and 12 of plaintiffs' complaint, defendant Pierce County admits the same.

3. That in answer to the allegations contained in paragraph 7 of plaintiffs' complaint, defendant Pierce County admits that in July of 1996 there were stop ahead signs and stop signs for cars traveling along "B" Street and approaching its intersection with 168th Street and cross-road warning signs for cars traveling along 168th Street approaching its intersection with "B" Street. Defendant Pierce County denies each and every remaining allegation contained in paragraph 7 not admitted herein as true.

4. That in answer to the allegations contained in paragraph 9 of plaintiffs' complaint, defendant Pierce County admits that the vehicle driven by Clementina Guillen failed to stop at the stop sign for travel along "B" Street East and collided in the intersection with a vehicle driven by Shelton L. Cole II. Defendant Pierce County denies each and every remaining allegation contained in paragraph 9 not admitted herein as true.

5. That in answer to the allegations contained in paragraph 10 of plaintiffs' complaint, defendant Pierce County admits that Clementina Guillen was killed as a result of the accident but is without sufficient information to form a belief in the truth of the remaining averments of said paragraph and therefore denies the same.

6. That in answer to the first paragraph 11 of plaintiffs' complaint, defendant Pierce County admits that some citizens had requested four way stop signage at the intersection and that after the accident in question such signage was temporarily installed. Defendant Pierce County denies that in the six years preceding the instant accident

in question there were 47 automobile accidents or a number of fatalities, and denies each and every remaining allegation contained in plaintiffs' first paragraph 11 pursuant to 23 U.S.C. § 409.

7. That in answer to the second paragraph 11 of plaintiffs' complaint, defendant Pierce County admits it owes a duty to exercise ordinary care in the construction and maintenance of its public roads to keep them in such a condition that they are reasonably safe for ordinary travel by persons using them in a proper manner and exercising ordinary care for their own safety but denies each and every remaining allegation contained in the second paragraph 11 of plaintiffs' complaint.

FURTHER, AND BY WAY OF AFFIRMATIVE AND OTHER DEFENSES, DEFENDANT PIERCE COUNTY ALLEGES AS FOLLOWS:

DISCRETIONARY IMMUNITY: All actions of defendant Pierce County herein alleged as negligence, manifest a reasonable exercise of judgment and discretion by authorized public officials made in the exercise of governmental authority entrusted to them by law and are neither tortious nor actionable.

CAPACITY: The plaintiffs lack capacity to sue, either individually or in a representative capacity.

MITIGATION OF DAMAGES: If the plaintiffs suffered any injury or damages, recovery therefor is barred or mitigated by plaintiffs' failure to mitigate said damages.

CLAIM FILING: The plaintiffs have failed to comply with the claim filing prerequisites of PCC 4.36 *et seq.*; RCW 36.45.010 and RCW 4.96 *et seq*.

PRIVILEGE: The conduct of this answering defendant was privileged and nontortious.

WHEREFORE, having fully answered plaintiffs' said complaint, defendant Pierce County prays the Court for the following relief:

[1] That plaintiffs' complaint be dismissed with prejudice;

[2] That defendant Pierce County be awarded its costs and reasonable attorney fees incurred herein;

[3] That defendants be allowed to reserve the right to amend this answer to assert such cross-claims, counter-claims and/or third party claims as during the course of discovery herein becomes proper;

[4] For such other and further relief as may appear just and equitable in the premises.

DATED this 13th day of May, 1998.

JOHN W. LADENBURG
Prosecuting Attorney

By /s/ Daniel R. Hamilton
DANIEL R. HAMILTON
Deputy Prosecuting Attorney
Attorneys for Def. Pierce County
PH: (253) 798-3612/WSBA #14658

APPENDIX E

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

IGNACIO GUILLEN, Plaintiff, v. PIERCE COUNTY, a municipal corporation, Defendants.	NO. 96 2 13404 5 DECLARATION OF THOMAS G. BALLARD, P.E., COUNTY ENGINEER

THOMAS G. BALLARD, P.E., declares under penalty of perjury under the laws of the State of Washington as follows:

1. I am a licensed professional engineer in good-standing in the State of Washington. I have been employed by the Public Works Department for Pierce County, Washington, for over 20 years. Since 1990, I have served as the duly-appointed County Engineer. I make this declaration in that capacity and upon my personal knowledge.

2. It is among my responsibilities to evaluate operational conditions, identify safety hazards and plan safety enhancements on County roads. This responsibility includes making application for funding for safety enhancements. All such work is done by me or at my direction and under my supervision.

3. The intersection at 168th Street East and B Street East in Pierce County has been evaluated and identified as appropriate for safety enhancement. The necessary safety enhancement has been planned. Of the documents

identified in the County's amended response to plaintiff's interrogatory no. 1, items 1-16 and 20 are reports and data compiled for those purposes. Item 19 is the design of the actual enhancement that was planned.

4. Items 17(a) and (b) and item 18 are prospectuses which are the actual applications made for safety enhancement funds. These prospectuses contain much of the actual information from the other items.

5. The prospectuses were sent to the Washington State Department of Transportation in application for federal-aid highway funds available under 23 U.S.C. § 152. Item 18, the first in time, was not granted. Item 17(a) was granted. Item 17(b) was an updated version that was required as a condition of the grant.

DATED this 23rd day of June, 1997, at Tacoma, Washington.

/s/ Thomas G. Ballard
THOMAS G. BALLARD, P.E.,
County Engineer

APPENDIX F

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

IGNACIO GUILLEN, Plaintiff, v. PIERCE COUNTY, a municipal corporation, Defendants.	)	NO. 96 2 13404 5 DECLARATION OF WAYNE T. GRUEN, P.E., DEPUTY ASSISTANT SECRETARY, WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

WAYNE T. GRUEN, P.E., declares under penalty of perjury under the laws of the State of Washington as follows:

1. I am a duly-appointed Deputy Assistant Secretary of the Washington State Department of Transportation ("WSDOT"). I make this declaration in that capacity and upon my personal knowledge.

2. The grant of Hazard Elimination Funds pursuant to 23 U.S.C. § 152 is performed under my supervision. This duty is delegated to WSDOT from the Federal Highway Administration ("FHWA"). The funds are for the purpose of improving safety conditions on state highways and local roads. Application materials are kept on file at WSDOT and are subject to audit by FHWA.

3. Pierce County made application for 23 U.S.C. § 152 funds for the intersection at 168th Street East and B Street East, by submitting prospectuses dated 5/11/95 and 4/3/96.

4. Hazard Elimination Funds were granted for the intersection by letter dated July 26, 1996, a true and correct copy of which is hereto attached.

DATED this 24th day of June, 1997, at Olympia, Washington.

/s/ Wayne T. Gruen
WAYNE T. GRUEN, P.E.,
Deputy Assistant Secretary
Washington State Department of Transportation

Washington State Department of Transportation
Sid Morrison
Secretary of Transportation

Transportation Building
P.O. Box 47308
Olympia, WA 98504-7308

September 4, 1996

Mr. Tom Ballard
County Engineer
Pierce County
2401 South 35th Street
Tacoma, WA 98409-7485

Pierce County
"B" St. E./168th St. E. Signal
P-STPH-TA96(076)
FUND AUTHORIZATION
CRP 5223

Dear Mr. Ballard:

We have received FHWA fund authorization, effective August 29, 1996, for this project as follows:

PHASE	TOTAL	FEDERAL SHARE
Preliminary Engineering	$30,000	$27,000

In addition, categorical exclusion determination has been approved.

Enclosed for your information and file is a fully executed copy of Local Agency Agreement LA-3346 between the state and your agency. Also enclosed is a pre-printed Progress Bill form for the referenced project. Please forward this form to the person handling billings.

Federal funds for this project are limited to $180,000. All costs beyond those in the latest executed agreement are the sole responsibility of your agency.

Upon receipt of your certification of Right of Way, notification that the project is ready for advertisement and a supplement to the Local Agency Agreement which includes construction funds, the construction phase of this project will be considered for funding.

You may proceed with the administration of this project in accordance with your WSDOT approved Certification Acceptance agreement.

Sincerely,

/s/ Kathleen B. Davis for

WAYNE T. GRUEN, PE
Deputy Assistant Secretary
TransAid

WTG:ch
Enclosure
cc: Bob Holcomb, Olympic Region /7440

APPENDIX G

THE HONORABLE FREDERICK B. HAYES

FRIDAY, JULY 25, 1997

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

IGNACIO GUILLEN, Plaintiff, vs. PIERCE COUNTY, a municipal corporation, Defendant.	NO. 96-2-13404-5 DECLARATION OF DARRELL L. COCHRAN IN OPPOSITION TO DEFENDANT PIERCE COUNTY'S MOTION FOR SUMARY JUDGMENT AND SUPPORT OF PLAINTIFF'S CROSS MOTION

I, DARRELL L. COCHRAN, declare and state as follows:

1. I am an attorney of record for plaintiff Ignacio Guillen, I am over the age of 18, am competent, and make this declaration based upon personal knowledge.

2. The facts included in the background section of the Brief in Opposition/Cross-Motion are true and correct to the best of declarant's knowledge.

3. I am attaching true and correct copies of the following exhibits:

Exhibit A August 16, 1996 letter from Susan Blastick, of Gordon, Thomas, et al., to Joe DeRosa of Pierce County, requesting accident history of the intersection of 168th Street East and "B" Street East;

Exhibit B September 9, 1996 letter from Daniel Hamilton, Pierce County Deputy Prosecuting Attorney, denying public records request;

Exhibit C October 28, 1996 letter from Salvador Mungia to Daniel Hamilton, clarifying that the public records request does not seek information which may property [sic] be considered privileged;

Exhibit D November 12, 1996 letter from Daniel Hamilton to Salvador Mungia claiming that all public records regarding the subject intersection were privileged, yet failing to identify responsive public records and failing to explain how the asserted exemption/privilege applied to each public record;

Exhibit E Plaintiff's First Set of Interrogatories dated January 7, 1997 and Defendant's Answers thereto, dated February 14, 1997;

Exhibit F This document, a copy of Defendant's Answer to Plaintiff's Interrogatory No. 1, was marked as Exhibit #1 to the deposition of Thomas G. Ballard. The documents identified in this Exhibit were numbered 1-20;

Exhibit G True and correct excerpted pages from the deposition of Thomas G. Ballard, June 3, 1997;

Exhibit H June 5, 1997 letter from Susan Jensen, Pierce County Deputy Prosecuting Attorney, refusing to identify authors of Documents #8 and #12, and also refusing to disclose these documents;

Exhibit I June 10, 1997 letter from Susan Jensen to Salvador Mungia recanting the position taken in her June 5, 1997 letter and, further, belatedly producing Documents #8, 12, 14 and 16. This is Pierce County's concession that it improperly withheld these public records an improper act which caused Plaintiff to formally litigate over the public disclosure request; and

Exhibit J Pierce County's Amended Answer to Interrogatory No. 1, reflecting improper withholding of public records.

4. I have reviewed the accounting balance sheets which reflect the costs incurred by Ignacio Guillen in pursuing legal action including reasonable attorneys fees, against Defendant Pierce County to compel disclosure of public records. The breakdown is as follows:

Costs:	$ 24.00
Filing Fee	$ 24.00
Service of Process	$ 24.00
Total cost of Deposition and Transcript of Thomas Ballard	$ 358.60
Fees:	$3,200.00

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this ___ day of July, 1997 at Tacoma, Washington.

Darrell L. Cochran

June 13, 2002
Page 3

August 16, 1996

Joe DeRosa
Pierce County Risk Management Department
955 Tacoma Avenue South
Room 303
Tacoma, WA 98402

Re: Request for Accident History

Dear Mr. DeRosa:

Please be advised that we would like to request a complete copy of the accident history of the intersection of 168th Street East and "B" Street East, Tacoma, Pierce County, Washington.

If you have any questions or concerns regarding this request, please contact the undersigned.

Thank you for your consideration in this matter.

Very truly yours,

Susan J. Blastick, C.L.A.
Paralegal

SJB:sjb

EXHIBIT B

LETTER FROM DANIEL R. HAMILTON, PIERCE COUNTY DEPUTY PROSECUTING ATTORNEY

September 9, 1996

Susan J. Blastick, C.L.A.
GORDON, THOMAS, HONEYWELL, ET AL.
2200 First Interstate Plaza
1201 Pacific Avenue
Tacoma, WA 98402
RE: Public Disclosure Request
Dear Ms. Blastick:

Pierce County has received your August 16, 1996 request for the accident history concerning "168th Street East and B Street East, Tacoma, Pierce County, Indiana." Assuming you actually mean Pierce County, "Washington," the law is clear that Pierce County is precluded from providing these documents.

The public disclosure act exempts from disclosure records "which would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts." RCW 42.17.310(1)(j). Congress in 1991 amended 23 U.S.C. § 409 to provide as follows:

> Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled for the purpose of identifying evaluating or planning the safety enhancement of potential accident sites, hazardous roadway conditions, or railway-highway crossings, pursuant to sections 130, 144, and 152, of this title or for the purpose of developing any highway safety construction improvement project which may be implemented

> utilizing Federal-aid highway funds *shall not be subject to discovery* or admitted into evidence in a Federal or *State court proceeding* or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists, or data.

(Emphasis added). 168th Street East and "B" Street East are part of the Federal-aid highway system and your request seeks documents "compiled for the purpose of identifying evaluating or planning the safety enhancement of potential accident sites, hazardous roadway conditions . . . or for the purpose of developing any highway safety construction improvement project." Because federal and state courts uniformly have enforced the statute, e.g. *Harrison v. Burlington N. R.R. Co.*, 965 F.2d 155 (7th Cir. 1992); *Robertson v. Union Pac. R.R. Co.*, 954 F.2d 1433 (8th Cir. 1992); *Claspill v. Missouri Pac. R. Co.*, 793 S.W.2d 139 (Mo.) *cert. denied*, 112 L.Ed.2d 139 (1990); *Perkins v. Ohio Dept. of Trans.*, 584 N.E.2d 794 (Ohio Ct. App. 1989); *Sawyer v. Illinois Cent. Gulf R.R. Co.*, 606 So.2d 1069 (Miss. 1992); *Light v. State of New York*, 560 N.Y. S.2d 962 (Ct. Cl. 1990), we must respectfully deny your request.

Very truly yours,

JOHN W. LADENBURG
Prosecuting Attorney

BY
DANIEL R. HAMILTON
Deputy Prosecuting Attorney
PH: 591-7746

DRH/mj

October 28, 1996

Daniel R. Hamilton
Pierce County Office of Prosecuting Attorney
955 Tacoma Avenue South, Suite 301
Tacoma, WA 98402-2160

Re: 168th Street East and B Street East

Dear Dan:

This is in response to a letter dated September 9, 1996 that you wrote to Susan Blastick of my office.

As you may or may not know we represent the family of a woman who was killed at the intersection noted above. (You were correct when you assumed that the intersection exists in Pierce County, Washington and not Pierce County, Indiana.) Ms. Blastick, on behalf of the clients, requested information regarding the accident history at that intersection. It is my understanding that Pierce County is taking the position that it need not produce that documents [sic] under the Public Disclosure laws – specifically, RCW 42.17.310(j) and 23 U.S.C. § 409 are being relied upon by the County to justify non-disclosure.

I want to make the record clear that we are not seeking any reports that were specifically written for developing any safety construction improvement project at the intersection at issue. However, on behalf of our clients, we are seeking a copy of all documents that record the accident history of the intersection that may have been used in the preparation of any such reports. In other words, we are simply seeking information as to when accidents have occurred at the intersection for the last ten years. This would include any documents that record (1) the date of

any such accidents, (2) the parties involved at each such accident, (3) the date of each such accident, (4) fatalities, if any, at each such accident, (5) the identification of all known accidents at each such accident, (6) copies of photographs taken at each such accident, (7) the configuration of the intersection (what traffic signs existed) at the time of each such intersection, and (8) documents recording traffic counts at the intersection.

Obviously, the documents we are requesting would not contain any opinions by Pierce County representatives as to the safety of the intersection. Instead, we are seeking documents pertaining to facts.

If this clarifying letter changes your opinion please let me know when we can view the documents. If this letter does not change your opinion then I would appreciate a written response memorializing your position.

I look forward to hearing from you.

Very truly yours,

Salvador A. Mungia

SAM:sam
cc: Amparo and Mario Guillen
Ignacio Guillen

EXHIBIT D

LETTER FROM DANIEL R. HAMILTON, PIERCE COUNTY DEPUTY PROSECUTING ATTORNEY

November 12, 1996

Salvador A. Mungia
GORDON, THOMAS, HONEYWELL, ET AL.
2200 First Interstate Plaza
1201 Pacific Avenue
Tacoma, WA 98402
RE: Public Disclosure Request
Dear Sal:

This is in response to your letter of October 28 regarding your office's earlier request for the accident history concerning "168th Street East and B Street East . . . " Your letter lists eight categories of materials sought – some going beyond the earlier requested "accident history" to such things as "traffic counts at the intersection." As to the latter new traffic count request, such documents are attached hereto.

The remainder of the list however relates to data the County has compiled for the sole purpose of identifying evaluating or planning the safety enhancement of potential accident sites, hazardous roadway conditions or for developing highway safety construction improvement projects. We are precluded from providing these materials – whether or not they contain County opinions as to safety – because 23 U.S.C. § 409 provides:

> Notwithstanding any other provision of law, reports, surveys, schedules, lists, or *data* compiled for the purpose of identifying evaluating or planning the safety enhancement of potential accident sites, hazardous roadway conditions, or

> railway-highway crossings, pursuant to sections 130, 144, and 152, of this title or for the purpose of developing any highway safety construction improvement project which may be implemented utilizing Federal-aid highway funds *shall not be subject to discovery* or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists, or data.

(Emphasis added). 168th Street East and "B" Street East are part of the Federal-aid highway system and the public disclosure act exempts from disclosure records "which would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts." RCW 42.17.310(1)(j).

Because, as previously documented in our earlier response, federal and state courts uniformly have enforced the statute, we must continue to respectfully deny your request.

Very truly yours,

JOHN W. LADENBURG
Prosecuting Attorney

BY

DANIEL R. HAMILTON
Deputy Prosecuting Attorney
PH: 591-7746

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EXHIBIT E

ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

TO: Defendant, Pierce County

AND TO: Susan P. Jensen, its attorney.

DEFINITIONS AND PROCEDURES

A. Procedures: Plaintiff propounds the following interrogatories pursuant to CR 33, and you must file answers within thirty (30) days of service. For your convenience you have been served with two copies of the interrogatories. Please complete the answers within the space provided and, if needed, add additional pages. Return the signed and verified original to this office.

B. Scope of Answers: (1) Use of the pronoun "you" refers to Pierce County and it is intended that the answers include all information known to the persons to whom the interrogatories are directed, their attorneys and investigators; and (2) the term "accident" refers to the event(s) that is the subject of this lawsuit.

C. Document: As used herein the word "document" shall mean the original and any copy, regardless of origin or location, of any letter, memorandum, hand-written or typed note, record, report, working paper, graph, chart, index, data sheet or data processing card, map, drawing, book, periodical, pamphlet, tape, photograph or any other written, recorded or trancribed, punched, taped, filmed, photographic or graphic matter, however produced or reproduced, to which you have or have had access.

D. Supplemental Answers: These interrogatories and requests for production shall be deemed to be continuing, and in the event you discover further information that is responsive, you are required to supplement your answers and responses.

Interrogatory No. 1: Identify all documents that are within the control, possession, or custody of Pierce County that record, in any manner, the accidents that have occurred during the last ten years at the intersection of 168th Street East and B Street East in Pierce County, Washington.

Answer:

(See attached 2 pages.)

Interrogatory No. 2: Of the documents identified in the preceding interrogatory, identify the documents that were compiled for the purpose of identifying, evaluating, or planning the safety enhancement of potential accident sites, hazardous roadway conditions, or railway-highway crossings pursuant to 23 U.S.C. § 130.

Answer:

None

Interrogatory No. 3: For each such document identified in your response to Interrogatory No. 2, identify each governmental source of the information contained within that document. For example, if the Washington State Patrol prepared a report which was used as an information source, then so state.

Answer:

N/A

Interrogatory No. 4: For each document identified in your response to Interrogatory No. 2, specify whether the document was sent to the U.S. Secretary of Transportation and if not, state whether the document was sent to any official of the United States government.

Answer:

N/A

Interrogatory No. 5: Identify all Pierce County officials or employees who prepared the documents that were identified in your response to Interrogatory No. 4.

Answer:

N/A

Interrogatory No. 6: Of the documents identified in your response to Interrogatory No. 1, identify the documents that were compiled for the purpose of identifying, evaluating, or planning the safety enhancement of potential accident sites, hazardous roadway conditions, or railway-highway crossings pursuant to 23 U.S.C. § 144.

Answer:

None.

Interrogatory No. 7: For each such document identified in your response to Interrogatory No. 6, identify each governmental source of the information contained within that document. For example, if the Washington State Patrol prepared a report which was used as an information source, then so state.

Answer:

N/A

Interrogatory No. 8: For each document identified in your response to Interrogatory No. 6, specify whether the document was sent to the U.S. Secretary of Transportation and if not, state whether the document was sent to any official of the United States government.

Answer:

N/A

Interrogatory No. 9: Identify all Pierce County officials or employees who prepared the documents that were identified in your response to Interrogatory No. 8.

Answer:

N/A

Interrogatory No. 10: Of the documents identified in your response to Interrogatory No. 1, identify the documents that were compiled for the purpose of identifying, evaluating, or planning the safety enhancement of potential accident sites, hazardous roadway conditions, or railway-highway crossings pursuant to 23 U.S.C. § 152.

Answer:

All of the documents identified were so compiled.

Interrogatory No. 11: For each such document identified in your response to Interrogatory No. 10, identify each governmental source of the information contained within that document. For example, if the Washington State Patrol prepared a report which was used as an information source, then so state.

Answer:

See responses to Interrogatory No. 1

Interrogatory No. 12: For each document identified in your response to Interrogatory No. 10, specify whether the document was sent to the U.S. Secretary of Transportation and if not, state whether the document was sent to any official of the United States government.

Answer:

Unknown to this defendant. Application for 23 U.S.C. 152 funding is made by Pierce County to the Washington State Department of Transportation (WSDOT).

Interrogatory No. 13: Identify all Pierce County officials or employees who prepared the documents that were identified in your response to Interrogatory No. 12.

Answer:

See answer to Interrogatory No. 1. All named individuals are County employees or officials.

Interrogatory No. 14: Of the documents identified by you in your response to Interrogatory No. 1, identify the documents compiled for the purpose of developing any highway safety construction improvement project which may be implemented using Federal-aid highway funds.

Answer:

All documents.

Interrogatory No. 15: For each such document identified in your response to Interrogatory No. 14, identify each governmental source of the information contained within that document. For example, if the Washington State Patrol prepared a report which was used as an information source, then so state.

Answer:

See response to Interrogatory No. 1.

Interrogatory No. 16: For each document identified in your response to Interrogatory No. 14, specify whether the document was sent to the U.S. Secretary of Transportation and if not, state whether the document was sent to any official of the United States government.

Answer:

See response to Interrogatory No. 12.

Interrogatory No. 17: Identify all Pierce County officials or employees who prepared the documents that were identified in your response to Interrogatory No. 14.

Answer:

See response to Interrogatory No. 13.

Interrogatory No. 18: Identify all Pierce County officials or employees who produced the documents identified in your response to Interrogatory No. 1 for all documents that you have not previously identified and who prepared the documents.

Answer:

See response to Interrogatory No. 17.

Interrogatory No. 1:

Answer: Objection.

The pending lawsuit requires the County to show cause why certain records requested by plaintiff's counsel in a letter dated October 28, 1996 are not subject to public disclosure. To the extent that this interrogatory may seek

information that goes beyond the original request, plaintiff seeks to discover information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. This defendant objects further that the information requested in items (1)-(7) of the third paragraph of the aforementioned letter is privileged and not subject to discovery, or public disclosure, pursuant to 27 U.S.C. 409 and 42.17.310(j). The information requested in item (8) was previously provided by the County and is in plaintiff's possession.

Without waiving objection, defendant identifies the following documents:

Motor vehicle traffic accidents by location – County of Pierce – prepared by Records Section, Washington State Patrol, 1/190 – 6/30/96.

"B" Street and 168th St. East, background on intersection traffic conditions, July 8, 1996, prepared by James Ellison.

168th St. East, "B" Street East, traffic signal warrants evaluation, prepared by staff, Traffic Division, Pierce County Public Works, Manager James Ellison.

Collision diagram dated 5/6/96 and attached accident list and reports, prepared by Georgia Fischer and the Washington State Patrol.

Collision diagram dated 4/21/95 prepared by Georgia Fischer.

December 22, 1988, memo from James Mitchell to James W. Ellison.

January 4, 1989, memo from Jim Ellison to Vern E. Wagner and John O. Trent.

December 15, 1988 letter to Jack Bujacich.

August 2, 1988 memo from Jim Ellison to Tom Ballard.

Collision diagram dated 1/5/89 prepared by Georgia Fischer.

Collision diagram dated 7/18/88 prepared by Georgia Fischer.

Letter received 7/7/88 to Department of Traffic and Engineering.

Police Traffic Collision Reports and Motor Vehicle Reports from 1/1/90 prepared by law enforcement agencies.

Memo dated 1/23/89 to Barbara Gelman from Jim Ellison.

Draft letter to Barbara Gelman from Frederick L. Anderson with note to file signed by Jim Ellison on 3/6/89.

Pierce County Road Department complaint form with 11/18/88 date notation. Prepared by James Ellison.

Letter dated 8/15/96 to WSDOT from Jacqueline Spears, County Design Engineer, with attached Prospectus Submittal Check List and Federal Aid Project Prospectus (signed by Thomas G. Ballard on 8/6/96) and Local Agency Agreement.

Project Application Check List and Federal Aid Project Prospectus signed by Thomas G. Ballard on 5/11/95.

Draft Pierce County Public Works and Utilities Transportation Services, Traffic Division, Traffic-Design Report, CRP 5223. Prepared under the Supervision of Thomas G. Ballard, County Road Engineer.

Memo 7/11/96 James Ellison to file.

The defendant also has a copy of the newspaper article referenced in the complaint.

EXHIBIT F
EXHIBIT 1 TO BALLARD DEPOSITION

Interrogatory No. 1:

Answer: Objection.

The pending lawsuit requires the County to show cause why certain records requested by plaintiff's counsel in a letter dated October 28, 1996 are not subject to public disclosure. To the extent that this interrogatory may seek information that goes beyond the original request, plaintiff seeks to discover information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. This defendant objects further that the information requested in items (1)-(7) of the third paragraph of the aforementioned letter is privileged and not subject to discovery, or public disclosure, pursuant to 27 U.S.C. 409 and 42.17.310(j). The information requested in item (8) was previously provided by the County and is in plaintiff's possession.

Without waiving objection, defendant identifies the following documents:

1.[1] Motor vehicle traffic accidents by location – County of Pierce – prepared by Records Section, Washington State Patrol, 1/190 [sic]-6/30/96.

2. "B" Street and 168th St. East, background on intersection traffic conditions, July 8, 1996, prepared by James Ellison.

3. 168th St. East, "B" Street East, traffic signal warrants evaluation, prepared by staff, Traffic Division, Pierce County Public Works, Manager James Ellison.

4. Collision diagram dated 5/6/96 and attached accident list and reports, prepared by Georgia Fischer and the Washington State Patrol.

5. Collision diagram dated 4/21/95 prepared by Georgia Fischer.

6. December 22, 1988, memo from James Mitchell to James W. Ellison.

7. January 4, 1989, memo from Jim Ellison to Vern E. Wagner and John O. Trent.

8. December 15, 1988 letter to Jack Bujacich.

9. August 2, 1988 memo from Jim Ellison to Tom Ballard.

10. Collision diagram dated 1/5/89 prepared by Georgia Fischer.

11. Collision diagram dated 7/18/88 prepared by Georgia Fischer.

12. Letter received 7/7/88 to Department of Traffic and Engineering.

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[1] Italics in this document indicate handwritten notations made to this form.

13. Police Traffic Collision Reports and Motor Vehicle Reports from 1/1/90 prepared by law enforcement agencies.

14. Memo dated 1/23/89 ~~to~~ *from* Barbara Gelman ~~from~~ *to* Jim Ellison.

15. Draft letter to Barbara Gelman from Frederick L. Anderson with note to file signed by Jim Ellison on 3/6/89.

16. Pierce County Road Department complaint form with 11/18/88 date notation. Prepared by James Ellison.

17. Letter dated 8/15/96 to WSDOT from Jacqueline Spears, County Design Engineer, with attached Prospectus Submittal Check List and Federal Aid Project Prospectus (signed by Thomas G. Ballard on 8/6/96) and Local Agency Agreement.

18. Project Application Check List and Federal Aid Project Prospectus signed by Thomas G. Ballard on 5/11/95.

19. Draft Pierce County Public Works and Utilities Transportation Services, Traffic Division, Traffic-Design Report, CRP 5223. Prepared under the Supervision of Thomas G. Ballard, County Road Engineer.

20. Memo 7/11/96 James Ellison to file.

The defendant also has a copy of the newspaper article referenced in the complaint.

EXHIBIT G
DEPOSITION OF THOMAS G. BALLARD
by Byers & Anderson, Inc.,
Court Reporting and Records Collection
June 3, 1997

Q Looking at the first document that's identified by Pierce County in response to Interrogatory No. 1, could you tell me how Pierce County obtained that document?

A The document is a computerized report that was prepared by the records section of the State Patrol and is supplied to us.

Q No. 1 consists of more than one document; is that correct?

A It is one document, multiple pages.

Q Is it supplied on an annual basis?

A It used to be a quarterly basis, but it doesn't seem to necessarily be consistently quarterly at this point.

Q Do all the counties get this?

A I would assume so, but I couldn't say for sure.

Q That's one you can tell me you don't know.

A Okay.

Q To whom does the report go to at Pierce County? Let's start with the department, first of all.

A It's sent to this department. I don't believe it has any position title to it. It's simply Pierce County Department of Public Works.

Q And then inside the Public Works Department, how does that document get filed, if you will? Where is it kept?

A It would come through my office, typically, and then be sent to the Traffic Division where it would be housed in their library, so to speak, under the Traffic Engineer.

Q Do you actually review these reports?

A Not in detail. I usually assign that to the traffic division to do for me.

Q And how many reports will the Public Works Department keep before it starts purging the older reports?

A I'd have to check our retention schedule, but I would think it's, like, seven years.

Q Is this document sent to any other department of Pierce County other than the Public Works Department, Traffic Division?

A No.

Q In this report, will it give the names of the people who are involved in the traffic accidents?

MS. JENSEN: Objection; calls for information that's privileged.

MR. MUNGIA: Go ahead. You can answer.

MS. JENSEN: I'm instructing you not to answer.

Q (By Mr. Mungia) Okay. Are you not answering this question based upon the instruction by your attorney?

A That's correct.

Q I want to make it clear. I'm not asking for any names. I'm asking whether it contains the names. Does it also, these reports by the –

MS. JENSEN: Just a minute. You're not going to ask for specific names. You want to know whether it contains names?

MR. MUNGIA: That was all my question was at the present time.

MS. JENSEN: I'm going to continue with my instruction. I think any information that is within that document is privileged.

Q (By Mr. Mungia) And do those reports contain the addresses of the people who are involved with the accidents?

MS. JENSEN: Same objection.

THE WITNESS: Same response.

Q (By Mr. Mungia) And do those reports contain the phone numbers of the people who are involved within those accidents?

MS. JENSEN: Same objection.

THE WITNESS: Same response.

Q (By Mr. Mungia) We're going to go through a lot of this, but I've got to make the record. Do those reports contain the names of witnesses to those accidents?

MS. JENSEN: Same objection.

THE WITNESS: Same response.

Q (By Mr. Mungia) And do those reports contain the addresses of those witnesses?

MS. JENSEN: Same objection.

THE WITNESS: Same response.

Q (By Mr. Mungia) And do those reports contain the phone numbers of those witnesses?

MS. JENSEN: Same objection.

THE WITNESS: Same response.

Q (By Mr. Mungia) Well, maybe we can get a three-part harmony here if we get this down. Do those reports contain the dates that the accident occurred?

MS. JENSEN: Same objection.

THE WITNESS: Same response.

Q (By Mr. Mungia) And will those reports contain the specific location of the accidents?

MS. JENSEN: Same objection.

THE WITNESS: Same response.

Q. (By Mr. Mungia) Do those reports contain the time of day of those accidents?

MS. JENSEN: Same objection.

THE WITNESS: Same response.

Q (By Mr. Mungia) Are these reports made accessible to anyone by the Pierce County Public Works Department?

A Do you want to repeat the question?

Q Yes. The reports that are given by the Washington State Patrol that we've just been talking about, No. 1 on Exhibit No. 1, are those given out by Pierce County to any person or entity?

MS. JENSEN: You mean outside of Pierce County?

Q (By Mr. Mungia) Outside of the Pierce County Public Works Traffic Department.

A Yes.

Q First of all, is it given to any person or entity not employed by Pierce County?

A Not to my knowledge.

Q I'm curious because there was a – once in a while I'll read in the TNT, Tacoma News Tribune, Morning News Tribune, saying that a certain number of accidents have occurred at a location. I'm wondering if the Public Works Department has given those documents to any of the news media.

A Absolutely not.

Q And Pierce County has not given those documents to any other governmental agency?

A We would have given them to other departments internal to Pierce County.

Q But not non-Pierce County governmental departments?

A We may have given them to the State Department of Transportation.

. . .

evaluating and assessing operation conditions on our public roads.

Q Any other purposes?

A Well, once we assess or evaluate the operating conditions, it would allow us to make recommendations, if warranted, for improvements. It would help us prioritize those improvements, seek funding for those improvements, program the project, if funded, and implement the project.

Q Any other purposes?

A No.

Q Do the documents within No. 1 of Exhibit No. 1 contain photographs of the accidents?

MS. JENSEN: Objection; calls for privileged information.

MR. MUNGIA: You have to –

THE WITNESS: I'll decline to respond.

MS. JENSEN: I'm instructing the witness not to answer.

Q (By Mr. Mungia) Based upon your attorney's instruction; is that correct?

A That's correct.

Q Does Pierce County receive any other information from a source outside of a Pierce County agency regarding accidents at a particular intersection?

A On Exhibit 1, Item 13, the Police Traffic Collision Reports and Motor Vehicle Reports.

Q That's from an outside agency?

A That's correct.

Q Any others?

A No.

Q So the corollary to my previous question would be all the documents except for 1 and 13, then, were prepared by some employee or agency of Pierce County; is that correct?

A All the rest of them included in here are prepared by us, would have been prepared by some employee of Pierce County.

Q Let me ask a few questions. I'm going to jump to 13, then. On the police traffic collision reports, are those separate from the motor vehicle reports or is that all one long title for a document?

A It's essentially all one long title for a document reporting the accidents.

Q Do some of those reports, then, come from the Pierce County Sheriff's Department?

A It would be whatever investigating law enforcement agency filled out the report would have been –

whoever the investigating officer was. It is not always the Pierce County Sheriff.

Q From the best of your knowledge, tell me all the different law enforcement agencies that have provided reports or reports such as would be found in No. 13.

A Understanding there may be an exception in the whole pile, but typically –

Q I'm not going to hold you to this.

A Typically, they're either the sheriff or state patrol that investigate accidents on county roads.

Q So the Tacoma Police Department usually wouldn't give you this type of report?

A Not on a county road.

Q Are those supplied at some regular interval like quarterly or are they supplied shortly after the accident?

A Typically, we will get a batch of reports that run from three to maybe five months after the actual report is filled out. We'll receive them, you know, randomly as a package of these will come in to us.

Q About to do our song and dance again. On No. 13, would those reports include the names of the people who had been involved in the accidents?

MS. JENSEN: Objection; calls for privileged information. I'm instructing the witness not to answer.

THE WITNESS: I'll choose not to answer based on those instructions.

Q (By Mr. Mungia) And do the reports identified in No. 13 of Exhibit No. 1 identify the addresses for the people who were involved within those accidents?

MS. JENSEN: Same objection.

THE WITNESS: Same response.

Q (By Mr. Mungia) And do the reports identified in Exhibit 1, No. 13, identify the phone numbers of the people who were involved in those accidents?

MS. JENSEN: Same objection.

THE WITNESS: Same response.

Q (By Mr. Mungia) And do those reports in No. 13 of Exhibit 1 identify by name, address, and telephone number the witnesses to the accidents?

MS. JENSEN: Same objection.

THE WITNESS: Same response.

Q (By Mr. Mungia) And do those reports identified in Exhibit 1, No. 13, identify the law enforcement officers who investigated the report or investigated the accidents?

MS. JENSEN: Same objection.

THE WITNESS: Same response.

Q (By Mr. Mungia) And do the reports identified in Exhibit 1, No. 13, contain photographs of the accident?

MS. JENSEN: Same objection.

THE WITNESS: Same response.

Q (By Mr. Mungia) Where are the reports identified in No. 13 of Exhibit No. 1 kept within the Public Works Department?

A A copy of the original is kept in the Traffic Division.

Q Is that the only copy kept within the Public Works Department?

A Yes.

Q Is this kept in the same file that we would find No. 1 documents of Exhibit No. 1?

A No.

Q Does the file have a name which contain [sic] the documents found under No. 13 of Exhibit No. 1?

A It's simply a file containing the Police Traffic Collision Reports and Motor Vehicle Reports.

Q Do you know what other agencies, non-Pierce County agencies, receive a copy of these reports?

A Pierce County is, to my knowledge, the only agency that would receive the report for unincorporated Pierce County roads.

Q So as far as you know, it would be the Pierce County Sheriff's Department and the Pierce County Public Works Department that have copies of the documents contained within No. 13 of Exhibit No. 1?

A Well, I know for sure we have a copy of it. I would not know for sure whether or not the sheriff has a copy of it.

Q If the Pierce County Sheriff Department investigated the accident, then they would keep a copy of that, to your knowledge?

A I don't know.

Q Are the documents contained within Exhibit 1, No. 13, distributed or released to any non-Pierce County entity by Pierce County?

A They would be exactly the same as No. 1. No.

Q Are the documents contained within No. 13 of Exhibit 1 used in the same manner as the documents found in No. 1 of Exhibit No. 1?

A That's correct.

Q Do you know whether any of the documents within No. 13 of Exhibit No. 1 have been sent to the Washington State Department of Transportation?

A It would be the same response as to No. 1.

Q You'd have to check the files?

A Yes.

Q And do you know whether any of the exhibits found within No. 13 of Exhibit No. 1 have been sent to any federal government agency or department?

A Again, we do not correspond directly with the federal

. . .

A The prime purpose was to brief both Vern and John on the current operation condition of the intersection at 168th and "B" Street.

Q Let's go to No. 8. Who wrote this December 15th, 1988, letter?

A I'd have to refer back to the document to find out who wrote the letter.

Q Is that something that you can do handy? Is it close by, you can look at it?

A I don't have a copy of it here. I'd have to go upstairs to the other end of the building to look at the file.

Q Can we do that, just take a five-minute break?

MS. JENSEN: I'd like to look at it. Maybe you can reserve the question. It may contain privileged information. The sender of the letter, I may need to give some identify [sic] on that.

MR. MUNGIA: The identity of the person?

MS. JENSEN: That may be privileged. I just want to see.

MR. MUNGIA: Can you do that, and if you don't think it's privileged, in a follow up say it was sent by John Doe. If it is privileged, say, "I think it's privileged and I'm not going to reveal it." It probably won't be necessary for me to ask you questions about it. But just in case, we can do that at another time.

Q (By Mr. Mungia) Who's Jack Bujacich?

A Jack, at the time –

MS. JENSEN: Didn't we just name a bridge after him?

THE WITNESS: A road. At the time, he was the department's ombudsman.

Q (By Mr. Mungia) Is he still employed by Pierce County?

A No, he has since retired.

Q Is he still alive?

A Yes.

Q Still reside in Pierce County?

A I believe so, although I understand he travels a tremendous amount.

Q Has any person or entity outside of Pierce County government employees or officials seen a copy of the December 15th, 1988, letter?

A To my knowledge, there hadn't been any.

Q Has the contents of the December 15th, 1988, letter been given by Pierce County to any non-Pierce County employee or official?

A No.

Q Either in writing or orally?

A No.

Q Within Pierce County, what other employee or official has seen the December 15th, 1988, letter?

A I don't know.

Q Does the December 15th, 1988, letter contain the names, addresses, and telephone numbers of people who

had been involved in automobile accidents at the intersection of 168th Street East and "B" Street East?

MS. JENSEN: Objection; calls for privileged information. Advise witness not to answer.

THE WITNESS: I choose not to respond based on Counsel's advice.

Q (By Mr. Mungia) Does the December 15th, 1988, letter contain the names, addresses, and telephone numbers of witnesses to automobile accidents occurring at 168th Street East and "B" Street East?

MS. JENSEN: Same objection and same advice.

THE WITNESS: Same response.

Q (By Mr. Mungia) What was the purpose, if you know, of the December 15th, 1988, letter?

A I believe the essential content of the letter was to share with Jack their concern relative to the operation of the intersection at 168th and "B" Street.

Q Is this letter written by a non-Pierce County person, non-Pierce County employee or official?

. . .

Q So it's not something you can do with information before you here?

A No.

MS. JENSEN: Just to clarify, and I don't mean to try to take control, but for the sake of clarity, can we assume that that information would have been included in

the preparation of one of the reports that appears as an exhibit on this document?

THE WITNESS: That's correct. And most likely, although I would want to go back and double-check, it would be No. 9.

Q (By Mr. Mungia) Is this an assumption or did we say it was included in No. 9?

A Well, without going back and absolutely making sure, I don't want to perjure myself, but based on my recollection of reviewing the documents, it would have been included in No. 9.

Q Let's go to No. 14. In 1989, what position did Barbara Gelman hold?

A I just noticed it should read memo dated 1/23/89 from Barbara Gelman to Jim Ellison rather than to Barbara Gelman from Jim Ellison.

Q Could you take my pen, mark Exhibit No. 1, and put your initials by the correction?

A (Witness complying.)

Q Do you recall my question?

A No.

Q What position did Barbara Gelman hold in January of 1989?

A She would have been a council member.

Q So that was Pierce County Council member; is that correct?

A That's correct.

Q Was this memo addressed to anybody other than to Jim Ellison?

A I don't believe so.

Q To your knowledge, has this memo been given by Pierce County to any non-Pierce County employee or official?

A No.

Q To your knowledge, has the information contained within this memo been given by Pierce County to any non-Pierce County employee or official?

A No.

Q To your knowledge, who, other than Jim Ellison, has seen this memo?

A I would have seen it and Fred Anderson would have seen it. I don't believe anyone else would have seen it in the department.

Q In 1989, what position did Fred Anderson hold?

A I believe he was Executive Director of County Operations and also Director of Public Works.

Q Did the memo dated January 23rd, 1989, contain the names, addresses, and telephone numbers of people who had been involved in automobile accidents at the intersection of 168th Street East and "B" Street East?

MS. JENSEN: Objection to the extent that the question goes to the contents of the memo. That information is privileged. Instruct the witness not to answer.

THE WITNESS: I choose not to respond based on the advice of Counsel.

Q (By Mr. Mungia) Does the memo dated January 23rd, 1989, contain the names, addresses, and telephone numbers of witnesses to automobile accidents occurring at the intersection of 168th Street East and "B" Street East?

MS. JENSEN: Same objection.

THE WITNESS: Same response.

Q (By Mr. Mungia) Do you know what the purpose was for Ms. Gelman issuing this memo?

A Primarily to share her concern relative to the intersection of 168th and "B" Street.

Q What has Pierce County done with this memo as far as using it in any way?

A We would have taken the memo and, along with other letters and information collected, we would have compiled it into the information relative to our assessment of operations of the intersection of 168th and "B" Street.

Q Let's go to No. 15. Has No. 15 been given to any entity outside Pierce County by Pierce County?

A No.

Q Has the information within No. 15 been given either orally or in writing to any entity outside of Pierce County by Pierce County?

A I don't believe so.

Q Who else, within Pierce County, has seen the letter by Mr. Anderson other than Ms. Gelman – well, let me just leave it at that. Other than Ms. Gelman.

A I apologize. I didn't hear the first part of the question, whether it was inside Pierce County or –

Q Correct. No one outside of Pierce County has seen this as far as you know?

A That's correct.

Q So who within Pierce County has seen it other than Ms. Gelman?

A I do not know.

Q So is this – what is this? Two documents: one is a draft of a letter by Mr. Anderson, and then a separate document of a memo to the file signed by Mr. Ellison?

A My recollection is that Mr. Ellison had a handwritten note on the first page of the draft letter.

Q Do you know whether this letter was ever finalized?

A It was not.

Q Well, did Ms. Gelman ever see a copy of this letter, then?

A I don't know.

Q What was the purpose of this draft letter?

A The purpose was to respond in writing from Fred Anderson, who would be the department director, to the memorandum in Item 14.

Q All right. Let's go to No. 16. Has this complaint form been given to any entity outside of Pierce County by Pierce County?

A No.

Q To your knowledge, no entity outside of Pierce County has seen this memo, then, or complaint?

A That's correct.

Q Who, within Pierce County, has seen a copy of this complaint?

A I'm not sure, but it would typically be limited to staff of the Traffic Division.

Q Does this complaint contain the names, addresses, and telephone numbers of people involved with automobile accidents at the intersection of 168th Street East and "B" Street East?

MS. JENSEN: Objection; calls for privileged information. And I instruct the witness not

* * *

EXHIBIT H

LETTER FROM SUSAN P. JENSEN, PIERCE COUNTY DEPUTY PROSECUTING ATTORNEY

June 5, 1997

Sal A. Mungia
Gordon Thomas Honeywell
Malanca Peterson & Daheim, PLLC
1201 Pacific Avenue, Suite 2200
Tacoma, WA 98402

RE: **Guillen v. Pierce County/Cause No. 96 2 13404 5**

Dear Sal:

In the course of Mr. Ballard's deposition on June 3, you asked for the identities of the authors of two letters described in the County's response to your interrogatory no. 1. For purposes of the deposition, you described those documents as nos. 8 and 12 of Exhibit 1. You also asked for the date of Exhibit 8. We agreed to consider your requests and respond by letter.

Exhibit 8 is dated December 15, 1988, as shown on our answer to interrogatory no. 1.

The County has previously described both letters in sufficient detail to demonstrate that they are subject to privilege pursuant to 23 USC 409. In our answers to your interrogatory no. 10 and in Mr. Ballard's deposition testimony, it has been stated that the documents were collected and compiled for the purpose of preparing applications for safety enhancement funds. *See*, 23 USC 409 and 23 USC 152.

Because these documents are subject to privilege, their contents, including the names of their authors, are not subject to disclosure. RCW 42.17.310. Although we are prepared to produce these documents *in camera* to Judge Hayes, disclosure of their authors to you would be paramount to waiving privilege as to their contents. The County declines to do so.

Very truly yours,

SUSAN P. JENSEN
Deputy Prosecuting Attorney
Phone: 798-6503

cc: Tom Ballard, P.E.

EXHIBIT I

MISCELLANEOUS DOCUMENTS

LETTER FROM SUSAN P. JENSEN, PIERCE COUNTY DEPUTY PROSECUTING ATTORNEY

June 10, 1997

Sal A. Mungia
Gordon Thomas Honeywell
Malanca Peterson & Daheim, PLLC
1201 Pacific Avenue, Suite 2200
Tacoma, WA 98402

RE: **Guillen v. Pierce County/Cause No. 96 2 13404 5**

Dear Sal:

For purposes of the Public Disclosure Act only, the County has determined that it will not claim privilege regarding items 8, 12, 14 and 16 (as you numbered them) in our response to your interrogatory no. 1. They are enclosed. Item 8 itself answers your question to Mr. Ballard regarding its author.

My apologies for any confusion caused to you by my letter with contrary information sent late last week. The County hereby withdraws its objections regarding production of those documents in this matter.

Very truly yours,

SUSAN P. JENSEN
Deputy Prosecuting Attorney
Phone: 798-6503

Enclosures

LETTER FROM CECILY BEST,
TEACHER, THOMPSON ELEMENTARY

December 15, 1988

Mr. Jack Bujacich
Department of Public Works
2401 South 35th Street
Tacoma, Washington 98409

Dear Mr. Bujacich,

You are aware of the traffic problem at the intersection of 168th Street East and B Street in Spanaway. Numerous

letters, protesters and much media interest have focused on citizen concerns regarding the lack of sufficient traffic control devices and the number of fatal accidents that occur at or near this intersection. The latest fatality, in August, was a 14 year old boy.

On October 19, 1988, I was involved in a collision at this corner. While my car was totalled, my life and that of the other driver, was spared and I was able to return to work within a few days.

I am truly appalled that to date no electronic traffic control devices have been installed at this intersection. I can appreciate tight budgets and limited fiscal resources, but certainly funds must be made available to improve traffic conditions at such dangerous intersections.

Further, there are many students, grades kindergarten through 12th, who walk to and from school in this area and must cross either the intersection of 168th and B, or 168th and A Street. These children walk along a route that has no crosswalk markings. The children have no marked pathway to follow – a dangerous situation at any time, made more so by winter's dark mornings.

You certainly have my support, to include increased taxes, to do the necessary. . . . let us hope what needs to be done *is* done before another life is lost.

Yours Repectfully,

CECILY BEST
Teacher, Thompson Elementary

cc: The Honorable Judge Thomas Larkin

LETTER TO THE DEPARTMENT OF TRAFFIC AND ENGINEERING, PIERCE COUNTY

Barbara A. Gallagher
421 So. 169th St.
Spanaway, Washington 98387
535-2934

To The Department of Traffic and Engineering, Pierce County.

Im [sic] writing this letter in concern about the dangerous intersection located at 168th East B Spanaway. The residents and myself in the Spanaway area are concerned about all the traffic accidents and fatalities that have occured over many years at this intersection.

We ask at this time that a four way stop or traffic signal be installed as soon as possible. Please look into this quickly before another fatality occurs.

Thank you

Barbara A. Gallagher
C.A.A.C.
Citizens Awareness Against Crime

Newspaper Article Enclosure:
Traffic light needed

I have lived in Spanaway near 168th and B streets since January. On June 24, at about 6 p.m., I witnessed a fatal car and bicycle accident. This boy was only 14 years old. This is the second such accident I have seen since March. I have also seen many near accidents in the past months.

I don't know the exact circumstances of this most recent accident, but people speed at this intersection literally 24 hours a day. I cannot help but wonder how many other

children and adults will suffer or die because Pierce County officials do not see the serious need for a traffic light at this intersection. I, for one, will never forget Justin K. Pelser, age 14, or how I heard his mother screaming for her son when she arrived at the scene.

Please, let's do something to prevent this from ever happening again. Everyone involved suffers terrible pain. Just ask that man who hit Justin and was crying uncontrollably if he wishes there had been a traffic light.

I would like to add that within five minutes of the call being made, there were many very dedicated and professional EMS personnel on the scene doing absolutely everything they could to save Justin's life. I was so impressed by them, I felt they needed recognition for what is often a very difficult and thankless job.

MICHELLE LEE
Spanaway

MEMORANDUM TO JIM ELLISON, ACTING TRAFFIC ENGINEER, PUBLIC WORKS DEPARTMENT

January 23, 1989

To: Jim Ellison, Acting Traffic Engineer, Public Works Department

From: Barbara Gelman, Councilmember

Subject: Speed turtles at 168th & East B Street intersection

In the past there has [sic] been meetings and discussions concerning safety factors at the 168th & East B Street

intersection. Last fall I spent a day picketing with the community leaders there, and I know fatalities have occurred at this intersection.

I am requesting that something be done at the intersection. If signalization is not possible, I would like to request that speed turtles be installed, as well as additional signage, indicating that this is a school zone area. Considering the increase in traffic over the past five years, I am outraged that this intersection has not been given a higher priority.

Please contact me as soon as possible as to when this can be done.

BG:dj

cc: Jake [sic] Bujacich
Fred Anderson
John Trent
Barbara Gallagher

PIERCE COUNTY MEMORANDUM

PIERCE COUNTY
Office of

_____

MEMORANDUM

Date: 12/2

From: _____

To: _____

Barbara Gelman
B/168th St
follow-up study
by end of Dec
shoot for
12-9

COMPLAINT FORM, PIERCE COUNTY ROAD DEPARTMENT

PIERCE COUNTY ROAD DEPARTMENT

COMPLAINTS

Date _____
Received By JWE
NAME: Barb Gallagher
Address: 421 – So. 169th St.
Span 98387
Tel. No. 535-2934
Subject: B St/168th St
– accident
speeds
[illegible]
also – [illegible] to Meg 11-18-88
Referred: _____
Road Dist. _____
Disposition: _____
Z-716

PIERCE COUNTY MEMORANDUM

PIERCE COUNTY
Office of

_____

MEMORANDUM

Date: _____

From: _____

To: _____

* Roy Hansen
115 E 168th
168/A St & B St
Lot of accidents
Req'st. rumble strip on two streets –
place at angle –
was in one ('76) an accident

COMPLAINT FORM, PIERCE COUNTY ROAD DEPARTMENT

Barbara Gelman
Marilyn Rasmussen

[illegible]

PIERCE COUNTY ROAD DEPARTMENT

COMPLAINTS

Date 6/27/88
Received By JWE
NAME: Barbara Gallagher, CAAC Citizens Aware.
Against Crime

Address: 421 – S. 169th, Span 98387
Tel. No. 535-2934
Subject: B St E/168th St E

- she & area residents (she says) want 4-way stop
- boy's fault – 14 yrs old – didn't stop for stop sign
- she's written letter – will be sent to Traffic Eng

Referred: _____
Road Dist. _____
Disposition: _____
Z-716

EXHIBIT J

PIERCE COUNTY'S AMENDED ANSWER TO PLAINTIFF'S INTERROGATORIES AND REQUESTS FOR PRODUCTION

COMES NOW Pierce County and amends its answer to Interrogatory No. 1 as follows:

ANSWER TO INTERROGATORY NO. 1: Objection.

The pending lawsuit requires the County to show cause why certain records requested by plaintiff's counsel in a letter dated October 28, 1996 are not subject to public disclosure. To the extent that this interrogatory may seek information that goes beyond the original request, plaintiff seeks to discover information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. This defendant objects further that the information requested in items (1)-(7) of the third paragraph of the aforementioned letter is privileged and not subject to discovery, or public disclosure, pursuant to 23 U.S.C. § 409 and 42.17.310(j). The information

requested in item (8) was previously provided by the County and is in plaintiff's possession.

Without waiving objection, defendant identifies the following documents:

1. Motor vehicle traffic accidents by location – County of Pierce – prepared by Records Section, Washington State Patrol. 1/190 [sic] – 6/30/96.

2. "B" Street and 168th St. East, background on intersection traffic conditions, July 8, 1996, prepared by James Ellison.

3. 168th St. East, "B" Street East, traffic signal warrants evaluation, prepared by staff, Traffic Division, Pierce County Public Works, Manger James Ellison.

4. Collision diagram dated 5/6/96 and attached accident list and reports, prepared by Georgia Fischer and the Washington State Patrol.

5. Collision diagram dated 4/21/95 prepared by Georgia Fischer.

6. December 22, 1988 memo from James Mitchell to James W. Ellison.

7. January 4, 1989 memo from Jim Ellison to Vern E. Wagner and John O. Trent.

8. December 15, 1988 letter to Jack Bujacich. **PROVIDED TO PLAINTIFF.**

9. August 2, 1988 memo from Jim Ellison to Tom Ballard.

10. Collision diagram dated 1/5/89 prepared by Georgia Fischer.

11. Collision diagram dated 7/18/88 prepared by Georgia Fischer.

12. Letter received 7/7/88 to Department of Traffic and Engineering. **PROVIDED TO PLAINTIFF.**

13. Police Traffic Collision Reports and Motor Vehicle Reports from 1/1/90 prepared by law enforcement agencies.

14. Memo dated 1/23/89 from Barbara Gelman to Jim Ellison. **PROVIDED TO PLAINTIFF.**

15. Draft letter to Barbara Gelman from Frederick L. Anderson with note to file signed by Jim Ellison on 3/6/89.

16. Pierce County Road Department complaint form with 11/18/88 date notation. Prepared by James Ellison. **PROVIDED TO PLAINTIFF.**

17.A. Federal Aid Prospectus signed 4/3/96.

17.B. Letter dated 8/15/96 to WSDOT from Jacqueline Spears, County Design Engineer, with attached Prospectus Submittal Check List and Federal Aid Project Prospectus (signed by Thomas G. Ballard on 8/6/96) and Local Agency Agreement.

18. Project Application Check List and Federal Aid Project Prospectus signed by Thomas G. Ballard on 5/11/96.

19. Draft Pierce County Public Works and Utilities Transportation Services, Traffic Division, Traffic-Design Report, CRP 5223.

Prepared under the supervision of Thomas G. Ballard, County Road Engineer.

20. Memo 7/11/96 James Ellison to file.

The defendant also has a copy of the newspaper article referenced in the complaint.

APPENDIX H

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

IGNACIO GUILLEN Plaintiff, v. PIERCE COUNTY, a municipal corporation, Defendants.	NO. 96 2 13404 5 SUPPLEMENTAL DECLARATION OF THOMAS G. BALLARD, P.E., COUNTY ENGINEER

THOMAS G. BALLARD, P.E., declares under penalty of perjury under the laws of the State of Washington as follows:

1. I hereby reassert all of the facts in my first declaration in this matter signed by me on June 23, 1997 and filed with the County's Motion for Summary Judgment as Exhibit A. I make this supplemental declaration upon my personal knowledge.

2. Item 15 among the documents submitted to the Court for *in camera* review is the draft of a memorandum from Fred Anderson, then Public Works Director, to Barbara Gelman, then County Council member. It consists of information used for the County's application for federal funds for safety enhancement at the intersection of 168th Street East and B Street East.

3. Items 8, 12, 14 and 16 are items that were initially not disclosed to plaintiff. Each of these items is a communication to the County regarding a perceived problem at the intersection. The County considered these

documents in planning the safety enhancement of the intersection for funding application purposes and for that reason, upon the advice of counsel, they were not disclosed.

4. Our counsel advised us not to invoke the Section 409 privilege for documents that we did not consider crucial to protect the County's legal position. After reflection, and upon the advice of the Deputy Prosecutor, I determined that it was not necessary to assert the privilege for these particular documents, and they were provided to plaintiff.

DATED this 16th day of July, 1997, at Tacoma, Washington.

/s/ Thomas G. Ballard
THOMAS G. BALLARD, P.E.,
County Engineer

APPENDIX I

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

IGNACIO GUILLEN Plaintiff, v. PIERCE COUNTY, a municipal corporation, Defendants.	NO. 96 2 13404 5 THIRD DECLARATION OF THOMAS G. BALLARD, P.E., COUNTY ENGINEER

THOMAS G. BALLARD, P.E., declares under penalty of perjury under the laws of the State of Washington as follows:

1. I hereby affirm and adopt herein by this reference all statements in the earlier two declarations made by me in this cause. I am aware that the Court has stated that it does not believe that the documents at issue in this matter were collected and compiled for the purpose of making application for federal funds for safety improvements at the intersection here at issue. I offer the following statements for clarification to the Court. I make this declaration upon my personal knowledge.

2. It is among my duties as County Engineer to oversee all aspects of County road operation, design, and construction. This requires the constant monitoring and study of accidents and safety conditions; the planning, design and implementation of safety improvements; the identification of funding sources for the implementation of

those improvements; the applications for such funds; and the construction of the improvements.

3. The subject intersection, 168th Street East at B Street East, has been part of the federal aid highway system for more than 20 years. As such, it has been eligible for federal aid highway funds, including those available under 23 U.S.C. § 152, upon a showing of need and appropriate planning and design for safety improvements. As previously stated in the declaration of Wayne Gruen, the decision whether to award Section 152 funds is up to the Washington State Department of Transportation (WSDOT) acting as the agent of the Federal Highway Administration.

4. The County applied for and was granted Section 152 funds to construct safety improvements at the subject intersection. A 1995 application was denied; and 1996 application was granted.

5. Two of the documents at issue are items 1 and 13. Item no. 13 is a collection of the accident reports for the subject intersection from 1990 through 1996. Item no. 1 is a list of those same accidents showing the location, time, date and nature of the accident. A study of the accidents at the intersection was a crucial element in the County's review of the operation and safety of the intersection. The County collected those accident reports solely for that purpose. The decision to apply for Section 152 funds was based in large part on those accident reports. The nature of the accidents, as identified in those reports, was a critical determining factor in the County's design of the safety improvement for which application was made. The WSDOT requires the County to fill out a prospectus to apply for Section 152 funds. (Item nos. 17, 17A and 18 are

the actual prospectuses.) The prospectus specifically requires an accident history. If the County did not collect and analyze the accident reports, it would not be possible to plan and implement the safety improvements and it would be impossible to apply for and receive Section 152 funds.

6. Items 10 and 11 are collision diagrams prepared by a County employee who is responsible for investigating accidents at the intersection. The collision diagrams were used to consider whether the design of the intersection was a causative factor in the accidents and what, if any, design improvements could be made to increase safety and lessen the possibility of future accidents. Collision diagrams are a critical element in the County's design of improvements. The Section 152 application specifically requires an explanation and design of the proposed improvement. Items 10 and 11 (as were items 4 and 5) were compiled and used specifically for the purpose of determining the need for and designing the signalization improvement that was the basis of the Section 152 application and that was ultimately installed at the intersection.

7. Items 1, 13, 10 and 11 were specifically used to make the decision to apply for Section 152 funds and to make the application. If the County had not collected items 1 and 13 and if the County had not prepared and compiled items 10 and 11, the Section 152 funds could not have been applied for and the safety improvement would not be in place today.

DATED this 30th day of September, 1997, at Tacoma, Washington.

/s/ Thomas G. Ballard
THOMAS G. BALLARD, P.E.,
County Engineer

APPENDIX J

SUPERIOR COURT OF THE
STATE OF WASHINGTON
FOR PIERCE COUNTY

IGNACIO GUILLEN as Legal Guardian for JENNIFER GUILLEN and ALMA GUILLEN, minors; and MARIANO GUILLEN, as Legal Guardian for PAULINA GUILLEN and FATIMA GUILLEN, Plaintiffs vs. PIERCE COUNTY, a municipal corporation, and THE ESTATE OF CLEMENTINA GUILLEN-ALEJANDRE, Defendants	NO. 98-2-06119-2 DECLARATION OF JULIANA T. KENDALL, IN SUPPORT OF MOTION TO COMPEL DISCOVERY HEARING DATE: October 9, 1998

I, JULIANA T. KENDALL, hereby declare as follows:

1. I am one of the attorneys for the plaintiffs in the above-named action.

2. Attached hereto as Exhibit "A" is a true and correct copy of Plaintiffs' First Set of Interrogatories and Request for Production of Documents to Defendant Pierce County and Answers Thereto.

3. On July 29, 1998 at 10:00 a.m. plaintiffs' counsel, Juliana T. Kendall and Salvador A. Mungia, and Pierce County's counsel, Daniel R. Hamilton, conducted a CR

26(i) telephone conference regarding the discovery responses.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

SIGNED this ___ day of September, 1998 in Tacoma, Washington.

Juliana T. Kendall

APPENDIX K

SUPERIOR COURT OF THE
STATE OF WASHINGTON

FOR PIERCE COUNTY

IGNACIO GUILLEN as Legal Guardian for JENNIFER GUILLEN and ALMA GUILLEN, minors; and MARIANO GUILLEN, as Legal Guardian for PAULINA GUILLEN and FATIMA GUILLEN, Plaintiffs, vs. PIERCE COUNTY, a municipal corporation, and THE ESTATE OF CLEMENTINA GUILLEN-ALEJANDRE, Defendants.	NO. 98 2 06119 2 ORDER DENYING PIERCE COUNTY'S MOTION FOR RECONSIDERATION November 20, 1998 JUDGE JOHN A. McCARTHY

THIS MATTER having come before this Court on Defendant Pierce County's Motion for Reconsideration, the Court having reviewed the records and files herein, having heard argument of counsel, and being fully advised of the matters involved herein, now, therefore, it is hereby

ORDERED that Defendant Pierce County's Motion for Reconsideration is hereby DENIED.

DONE IN OPEN COURT this 20 day of November, 1998.

/s/ John A. McCarthy
THE HONORABLE
JOHN A. MCCARTHY

Presented By:

GORDON, THOMAS, HONEYWELL,
MALANCA, PETERSON & DAHEIM, P.L.L.C.

By /s/ Darrell L. Cochran
Darrell L. Cochran22851
Juliana T. Kendall, WSBA No. 27778
Attorneys for Plaintiffs

Approved as to Form:

JOHN W. LADENBURG
Prosecuting Attorney

By /s/ _____
Daniel R. Hamilton, WSBA #14658
Deputy Prosecuting Attorney
Attorneys for Defendant Pierce County